

(e) *Action on motion.* (1) *Referral granted.* Upon consideration of a Motion Requesting Referral of Material Question of Substantive Law, if one or more of the Copyright Royalty Judges agrees with the request, the Chief Judge shall issue an appropriate referral. The referral will identify the Judge or Judges voting in favor of the referral, the issue to be referred, and the schedule for the filing of briefs by the parties of the issues. After the briefs and other relevant materials are received, they will be transmitted to the Register of Copyrights. A Copyright Royalty Judge who voted against the referral who wishes to do so may include a statement explaining that vote in the referral package.

(2) *Referral denied.* If none of the Copyright Royalty Judges agrees with the request, the Board will issue an order denying the request which will provide the basis for the decision. A copy of any order denying a Motion Requesting Referral of Material Question of Substantive Law will be transmitted to the Register of Copyrights.

(f) *No effect on proceedings.* The issuance of a request to the Register of Copyrights for an interpretive ruling under this part does not delay or otherwise affect the schedule of the participants' obligations in the relevant ongoing proceeding, unless that schedule or those obligations are expressly changed by order of the Board.

(g) *Binding effect; time limit.* The Copyright Royalty Board will not issue a final determination in a proceeding where the referral of a question to the Register of Copyrights under this part is pending, unless the Register has not delivered the decision to the Copyright Royalty Board within 14 days after the Register receives all of the briefs of the participants. If the decision of the Register of Copyrights is timely delivered to the Copyright Royalty Board, the decision will be included in the record of the proceeding. The legal interpretation embodied in the timely delivered response of the Register of Copyrights in resolving material questions of substantive law is binding upon the Copyright Royalty Board and will be applied by them in their final determination in the relevant proceeding.

§ 354.2 Novel questions.

(a) *Mandatory referrals.* If the material question of substantive law described in § 354.1(a) is a novel question of law, referral to the Register of Copyrights by the Copyright Royalty Board is mandatory. A "novel question of law" is a question of law that has not been determined in the prior decisions, determinations, or rulings under the Copyright Act of the Copyright Royalty Board, the Librarian of Congress, the Register of Copyrights, the Copyright Arbitration Royalty Panels (to the extent they are consistent with the current decisions, determinations, or rulings of the Register of Copyrights or the Librarian of Congress), or the former Copyright Royalty Tribunal.

(b) *Procedures.* The procedures set forth for the discretionary referral of material questions of copyright law to the Register of Copyrights by the Copyright Royalty Board, set forth in § 354.1, shall also govern the mandatory referral of novel questions, except that the Register of Copyrights' decision will be timely if it is delivered to the Copyright Royalty Board within 30 days after the Register of Copyrights has received all of the briefs or comments of the participants. The Copyright Royalty Board will not issue a final determination in a proceeding where the referral of a novel question to the Register of Copyrights under this part is pending, unless this 30-day period has expired.

§ 354.3 Register of Copyrights' authority to redesignate referrals.

If, during the 14-day period of a discretionary referral of a material question of law under § 354.1, the Register of Copyrights determines that the question is a "novel" one within the meaning of § 354.2(a), the Register may notify the Copyright Royalty Board of that determination. The Copyright Royalty Board will be bound by such a determination by the Register of Copyrights and will regard the Register's decision as timely delivered if it is received within the 30-day period applicable to novel question referrals.